IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.16414 of 2018
and
W.M.P.Nos.19562 & 19563 of 2018

M/s.Sun Motors
Rep.by its Proprietor
Mr.A.Vijay Anantha
No.340/A1, Katcheri Road,
Kattumanarkoil,
Cuddalore - 608 301. ..Petitioner

vs

The Commercial Tax Officer
Office of Commercial Tax Officer
Chidambaram-II,
Cuddalore District. ..Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings in TIN No.33466256678/2014-15 dated 14.11.2016 and quash the same and pass such further or other orders as this Hon'ble Court may be deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.C.S.Anu Varghese

For Respondent : Ms.G.Dhanamadhri
Government Advocate
(Taxes)

O R D E R

Mr.C.S.Anu Varghese, learned counsel for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate(Taxes) on behalf of the sole respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Short facts shorn of micro details / particulars are that the writ petitioner is a dealer under 'Tamil Nadu Value Added Tax Act 2006 (Tamil Nadu Act 32 of 2006)' [hereinafter

'TNVAT Act' for brevity], that there was verification of returns filed by the writ petitioner resulting in the respondent resorting to revised assessment procedure under Section 22(4) of TNVAT Act, that after sending revisional notices to the writ petitioner, that after obtaining the reply / objections from the writ petitioner and after holding two personal hearings (one on 24.08.2016 and another on 26.09.2016), respondent passed a revised assessment order dated 14.11.2016 bearing reference 'TIN No:33466256678/2014-15' ['impugned order' for brevity], which has been called in question in the instant writ petition.

4. There is no disputation or disagreement that the entire revised assessment is based on mismatch issue and there were over two hundred specific mismatches pointed out by the respondent.

5. The dates on which two personal hearings were held have already been set out supra. As far as the revisional notice is concerned, there were two revisional notices dated 27.11.2015 and 09.08.2016 prior to the first personal hearing on 24.08.2016. To the first revisional notice dated 27.11.2015, writ petitioner sent a reply dated 21.07.2016. To the second revisional notice dated 09.08.2016, writ petitioner sent a reply dated 19.08.2016.

6. After the first personal hearing on 24.08.2016, a further notice dated 20.09.2016 was sent to the writ petitioner and the second personal hearing was held on 26.09.2016 when a response i.e., response dated 26.09.2016 to the further notice, was also given by the writ petitioner in the second personal hearing on 26.09.2016.

7. A perusal of the impugned order also reveals that the respondent has accepted the objections / reply of the writ petitioner dealer with some of the serial numbers qua mismatches and held against the writ petitioner dealer only with regard to some other serial numbers. This is articulated in the impugned order itself and the relevant paragraph reads as follows:

> 'The objections filed by the dealers are meticulously considered as regards mismatch Sl.No:1,6,7,9,10,11 are acceptable since they have reported the same in the Form I returns of the respective months. For the remaining mismatches, Sl.No:2,3,4,5,8,12 to 19,261,262 are not acceptable as they have not furnished any supportive documents to confirm their stand.'

8. Therefore, the two revisional notices were issued, replies / objections were sent by the writ petitioner dealer, first personal hearing was held, thereafter a third revisional

notice was sent and after the third revisional notice, second personal hearing was held, wherein reply to the third revisional notice also was filed and after considering all these, the impugned order has been passed.

9. Therefore, there is clearly no violation of 'Natural Justice Principles' ['NJP' for brevity]. It is also nobody's case that the respondent does not have jurisdiction or powers to pass revised assessment orders under Section 22(4) of TNVAT Act.

10. This takes us to the alternate remedy aspect.

11. There is no disputation or disagreement before this Court that an alternate remedy is available to the writ petitioner by way of an appeal against the impugned order under Section 51 of TNVAT Act and that the appeal lies to the 'jurisdictional Appellate Deputy Commissioner' (hereinafter 'Appellate Authority' for brevity).

12. With regard to alternate remedy itself and more particularly, alternate remedy and exercise of writ jurisdiction, it is clearly a self imposed restraint qua writ Courts. Though it is a self imposed restraint qua writ Courts, Hon'ble Supreme Court had repeatedly held that in fiscal law matters, this rule of alternate remedy has to be applied with utmost rigour. In other words, this Court reminds itself that though alternate remedy rule is a rule of discretion and not a rule of compulsion, in fiscal statute matters, the same has to be applied with utmost rigour.

13. This Court reminds itself of the decision of the Hon'ble Supreme Court in Dunlop India case [Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and ors.] reported in (1985) 1 SCC 260 wherein Paragraph 3 reads as follows:

> '3. .....Article 226 is not meant to short circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it, that recourse may be had to Article 226 of the constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under

Article 226 of the constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. This practice needs to be strongly discouraged.'

(underlining made by this Court to supply emphasis and highlight)

14. Two and half decades later i.e., 2010 in Satyawati Tandon Case [United Bank of India Vs. Satyawati Tondon and others reported in (2010) 8 SCC 110], Hon'ble Supreme Court held that in cases pertaining to tax, cess etc., alternate remedy rule has to be applied with utmost rigour.

15. Satyawati Tandon principle was reiterated by Hon'ble Supreme Court in a subsequent judgment in K.C.Mathew case [Authorized Officer, State Bank of Travancore Vs. Mathew K.C. reported in (2018) 3 SCC 85]. Relevant paragraph in K.C.Mathew case is paragraph 10 and the same reads as follows:

> '10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under the SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, the object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp.123 & 128, Paras 43 & 55)
>
> > "43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy

under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

55.It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection.'

(Underlining made by this Court to supply emphasis and highlight)

16. In the light of all that have been set out supra, this Court is not inclined to interfere with the impugned order albeit preserving the rights of the writ petitioner to prefer a statutory appeal, if the writ petitioner is within the prescribed time limit and subject to pre deposit conditions adumbrated in Section 51. This Court notices from the case file that this writ petition itself was dismissed for default on 11.09.2018 as the writ petitioner did not pursue / prosecute the same. Thereafter, the writ petitioner has taken out a Writ Miscellaneous Petition being W.M.P.No.2236 of 2019 in W.P.No.16414 of 2018 for restoration and the writ petition was restored on 28.01.2019.

17. It is in the light of this trajectory that this Court is convinced that it is left open to the writ petitioner to avail alternate remedy subject to limitation and pre deposit conditions adumbrated in Section 51 of TNVAT Act.

18. This writ petition is dismissed albeit preserving the rights of the writ petitioner qua alternate remedy as mentioned supra in this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

kak

To

The Commercial Tax Officer
Office of Commercial Tax Officer
Chidambaram-II,
Cuddalore District.

+1cc to Special Government Pleader (Taxes)SR.No.70980

W.P.No.16414 of 2018

SPD(CO)
GMY(23/09/2019)